

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

**FILED**

**MAY 17 2019**

**Clerk, U.S. District Court  
District Of Montana  
Great Falls**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH YELLOW HAMMER, SR.,

Defendant.

CR 17-22-GF-BMM-JTJ

**FINDINGS AND  
RECOMMENDATIONS**

**I. Synopsis**

Defendant Joseph Yellow Hammer, Sr. (Yellow Hammer) has been accused of violating the conditions of his supervised release. Yellow Hammer admitted all of the alleged violations, except one. Yellow Hammer's supervised release should be revoked. Yellow Hammer should be placed in custody for 2 months, with 22 months of supervised release to follow.

**II. Status**

Yellow Hammer pleaded guilty to Domestic Abuse by a Habitual Offender on May 11, 2017. (Doc. 24). The Court sentenced Yellow Hammer to 21 months of custody, followed by 2 years of supervised release. (Doc. 37). Yellow Hammer's current term of supervised release began on December 7, 2018.

(Doc. 40 at 1).

### **Petition**

The United States Probation Office filed a Petition on March 13, 2019, requesting that the Court revoke Yellow Hammer's supervised release. (Doc. 40). The Petition alleged that Yellow Hammer had violated the conditions of his supervised release: 1) by failing to report for substance abuse testing; 2) by failing to report to his probation officer as directed; 3) by using marijuana; 4) by committing another crime; 5) by failing to report for substance abuse treatment; and 6) by failing to report for mental health treatment.

### **Initial appearance**

Yellow Hammer appeared before the undersigned for his initial appearance on May 16, 2019. Yellow Hammer was represented by counsel. Yellow Hammer stated that he had read the petition and that he understood the allegations. Yellow Hammer waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

### **Revocation hearing**

The Court conducted a revocation hearing on May 16, 2019. Yellow Hammer admitted that he had violated the conditions of his supervised release: 1) by failing to report for substance abuse testing; 2) by failing to report to his

probation officer as directed; 3) by using marijuana; 4) by failing to report for substance abuse treatment; and 5) by failing to report for mental health treatment. Yellow Hammer did not admit or deny alleged violation 4. The government did not attempt to prove alleged violation 4. The violations that Yellow Hammer Moore admitted are serious and warrant revocation of Yellow Hammer's supervised release.

Yellow Hammer's violations are Grade C violations. Yellow Hammer's criminal history category is I. Yellow Hammer's underlying offense is a Class D felony. Yellow Hammer could be incarcerated for up to 24 months. Yellow Hammer could be ordered to remain on supervised release for up to 36 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 3 to 9 months.

### **III. Analysis**

Yellow Hammer's supervised release should be revoked. Yellow Hammer should be incarcerated for 2 months, with 22 months of supervised release to follow. The supervised release conditions imposed previously should be continued. This sentence is sufficient but not greater than necessary.

### **IV. Conclusion**

The Court informed Yellow Hammer that the above sentence would be

recommended to Judge Morris. The Court also informed Yellow Hammer of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Yellow Hammer that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Yellow Hammer stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court **FINDS:**

That Joseph Yellow Hammer, Sr. violated the conditions of his supervised release: by failing to report for substance abuse testing, by failing to report to his probation officer as directed, by using marijuana, by failing to report for substance abuse treatment, and by failing to report for mental health treatment.

The Court **RECOMMENDS:**

That the District Court revoke Yellow Hammer's supervised release and commit Yellow Hammer to the custody of the United States Bureau of Prisons for a term of 2 months, with 22 months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO  
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of

Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 17th day of May, 2019.



John Johnston  
United States Magistrate Judge